

1 AnthOny Arceo, J-17830
2 a pro se litigant

FILED

2008 MAR 11 PM 2:47

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

3
4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE SOUTHERN DISTRICT

7 ANTHONY ARCEO,
8 petitioner,

9 V

10 WARDEN: Robert Ayers,
11 respondent,

/

/

/

CASE:

/

/

/

Civil 07-2131 W (BLM)

/

/

/

petitioners travers
per THE COURTS BRIEFING
SCHEDULE 12/20/2007

12
13
14
15 TO THE HONORABLE PRESIDING JUDGE AND ASSOCIATE JUSTICES IN THE
16 UNITED STATES DISTRICT COURT FOR THE STATE OF CALIFORNIA.

17
18 INTRODUCTION

19 Comes now, petitioner Anthony Arceo, hereby petitions this
20 court for writ of habeas corpus, directed to this honorable
21 United States District Court commanding Warden to cease taking
22 good time credits in excess of thirty days as mandated in Penal
23 Code § 2932, this directly affects this petitioners out date,
24 wher by the resondent would be required to re evaluate this
25 petitioners out date.

26 Petitioner represents to this court that he is held and
27 confined in the Department of Corrections facility in San Diego,
28 California making him serve longer and denyng him liberty in

1 violation of the due process clause listed in the 6th & 14th
2 Amendments to the United States Constitution.

3
4 Statement of Facts

5 1. Petitioner admits he is in RJ Donovan and challenges
6 the ability to take credits and the restoration of those credits.
7 Director Rule § 3016, Penal Code § 2932.

8
9 2. Petitioner has filed his appeals and what seems a raising
10 factor is after he has filed his conviction appeal any later
11 claim which attacks his sentence could be seen as a second appeal
12 although in the instant case petitioner has filed a CDC appeal the
13 issue of venue and jurisdiction became known to me after I read
14 in re Dikes, and that was in 2006.

15
16 3. Petitioner filed each level in the state provided appellate
17 procedure.

18
19 4. Petitioner originally filed his state claim in Los Angeles
20 as this was proper jurisdiction and venue for the facts as they
21 appeared to petitioner.

22
23 5. Petitioner filed in every court where his was permitted to
24 and filed in the California Supreme Court.

25
26 6. Petitioner asked this court to take judicial notice that
27 RJ Donovan did not have a functioning law library during this time
28 and a year later its not complete.

1 7. Petitioner believes he is entitled to the relief sought in
2 this brief that is supported by attached memorandum of points and
3 authorities.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I

Petitioners sole avenue seeking a speedy release is by way of habeas corpus PREISER V RODRIGUEZ 411 US at 500. The respondent claims that petitioner is barred from review through default for failure to 1. litigate in a timely manner. 2. No exhaustion of remedies. 3. Un-Timely in the California Supreme Court.

IN RESPONSE

Petitioner found out CDC was arbitrarily denying those who recieve good time credits which effects out dates and release by taking more than the statute provides. see Penal Code § 2932.

Petitioner has no control if CDC arbitrarily claims a appeal is barred by statute. However they continue to break the law by taking 120 days over the statutes' 30 day mandate.

Petitioner appologizes for appearing sloppy yet after my sensitive needs yard was transfered to RJ Donovan we could not mix with the main line inmates causing no legal library. She walked by weekly to pick up and drop off. To this day only six inmates are allowed inside and its still not complete. (legal law library)

Justified delay

II

Due process allows courts to hear habeas corpus, mandamus/ prohibition, or appeals of a agrieved party. The habeas corpus is not even stopped during war. Petitioner believed that the state corrections was following the law, and once he read in re Dikes he never knew.

1 CDC cannot continue to take time arbitrarily if it violate
the due process clause, whether or not if it was authorized McClen-
don V Turner 765 F Supp 251, 254 (WD Pa 19 1), also the practice
can constitute a policy or established procedure even if its
contrary to state law HICKS V FEENEY 770 F2d 375, 378-79 (3d cir
1985), and particularly if the deprivation amounts to a policy of
failing to enforce the law ANDERSON V CITY OF NEW YORK, 611 F Sup
481, 492 (SDNY 1985).

2. CDC controls many aspects of a prisoners life as a hearing
and the appeal to that hearing ZINERMON V BURCH 494 US at 138;
PLUMER V STATE OF MARYLAND 915 F2d 927,931 (4th cir 1990).

3 CDC should be ordered to cease taking excess credits that
allowable as enumerated within Penal Code § 2932.

III

Petitioner began his post conviction appeal in 1994 complet-
ing in the United States Supreme Court in 2005 # 05-8112 and a
application to file a second appeal in CA- 07-74339. see exhibits
A and B. Therefore prior to this case coming to fruition he was
towards the end of his appeal.

IV

Petitioner has never been charged for bringing alcohol onto
prison grounds. Penal Code § 4573.5 clearly apply to those who
bring alcohol onto prison grounds. While prisoners who are

1 incarcerated in prison lose and gain credits within Penal Code §
2 § 1170, 2931, 2933, 2932, and CCR § 3016. And since petitioner
3 receives half time the punishment is a 300% mark up from the
4 statutory 30 days.

5
6 CONCLUSION

7 Petitioner prays that this court grants this writ or in the
8 alternative it grants what ever judgement this court feels correct.

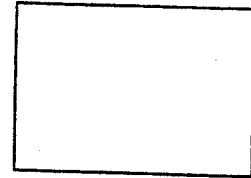
9
10 I am the declarant in the above entitled action, I have read the
11 foregoing documents and know the contents thereof and the same is
12 true of my knowledge, except as to those matters stated herein
13 upon information and belief, and as to those matters I believe them
14 to be true.

15 Executed on *March 9* 2008, at RJ Donovan, state Prison
16 Po Box 799003, San Diego, Ca. 92179.

Anthony Arceo

17
18 Anthony Arceo J-17830
19 pro se litigant
20
21
22
23
24
25
26
27
28

EXHIBIT COVER PAGE



EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

NUMBER OF PAGES TO THIS EXHIBIT: 2 PAGES.

JURISDICTION: (Check only one)

- ☐ CDCR Administrative Appeal
- ☐ California Victim Compensation
And Government Claims Board
- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme
- ☐ United States District Court
- ☒ United States Circuit Court
- ☒ United States Supreme Court

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

William K. Suter
Clerk of the Court
(202) 479-3011

February 21, 2006

Mr. Anthony A. Arceo
Prisoner ID #J-17830
CSP/LAC/C1-236
P.O. Box 8457
Lancaster, CA 93536

Re: Anthony A. Arceo
v. Tom L. Carey, Warden, et al.
No. 05-8112

Dear Mr. Arceo:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink that reads "William K. Suter". The signature is written in a cursive, flowing style.

William K. Suter, Clerk

FILED

UNITED STATES COURT OF APPEALS

DEC 27 2007

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ANTHONY A. ARCEO,

Petitioner,

v.

ROBERT HERNANDEZ, Warden,

Respondent.

No. 07-74339

ORDER

Before: GOODWIN, REINHARDT and W. FLETCHER, Circuit Judges.

The application for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition in the district court is denied. Petitioner has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

(A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

No petition for rehearing or motion for reconsideration shall be filed or entertained in this case. See 28 U.S.C. § 2244(b)(3)(E).

MOATT

VERIFICATIONSTATE OF CALIFORNIA
COUNTY OF SAN DIEGO

(C.C.P. SEC. 446 & 2015.5; 28 U.S.C. SEC. 1746)

I, ANTHONY ARCEO DECLARE UNDER THE PENALTY OF PERJURY
 THAT: I AM THE Declarant/Prisoner IN THE ABOVE ENTITLED ACTION;
 I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS
 TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND
 BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 9 DAY OF March, AT R.J.D.
 STATE PRISON, 480 Alta Road, San Diego, CA 92179

(SIGNATURE)

Anthony Arceo
(DECLARANT/PRISONER)PROOF OF SERVICE BY MAIL

(C.C.P. SEC. 1013 (a) & 2015.5; 28 U.S.C. SEC. 1746)

I, ANTHONY ARCEO, AM A RESIDENT OF R.J.D. STATE PRISON, IN THE COUNTY
OF S.D. STATE OF CALIFORNIA; I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM
NOT A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: R.J. DONOVAN
CORR FAC, PO BOX 799003, SAN DIEGO, CA. 92179

ON 3/9/08, I SERVED THE FOREGOING:

1. NOTICE OF MOTION,
2. WRIT OF HABEAS CORPUS

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY(S) HEREIN BY PLACING A TRUE COPY(S) THEREOF, ENCLOSED IN A SEALED ENVELOPE
 (S), WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO
 PROVIDED AT Richard J. Donovan Correctional Facility

XXXX XXST
 XXXX XXXXXXST.
 XXXXXX
 XXXXX

AG OFFICE
 PO BOX 944255
 SACRAMENTO, CA.
 94244

WARDEN; HERNANDEZ R
 RJ DONOVAN CORR FAC
 PO BOX 799003
 SAN DIEGO, CA.
 92179

USDC SOUTHERN
 880 FRONT STREET RM 4290
 SAN DIEGO, CA. 92101-8900

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS
 REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO
 ADDRESSED. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: 3/9/08Anthony Arceo
(DECLARANT/PRISONER)